



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Thompson Aluminum Casting Co.

File: B-256533

Date: May 24, 1994

DECISION

Thompson Aluminum Casting Co. protests that broad agency announcement (BAA) No. 94-PSC-01, issued by the Defense Electronics Supply Center (DESC), Defense Logistics Agency (DLA) was not set aside for either total or partial small business participation. The announcement was issued for the purpose of obtaining proposals on research which would result in significant improvements to the existing state of metal casting technology. Thompson also protests that the agency intends to make sole-source awards under the BAA.

We dismiss the protest.

The BAA, advertised in the Commerce Business Daily (CBD) on December 29, 1993, requested that proposals be submitted by January 28, 1994. Potential offerors were advised that they should include with their proposals completed certifications and representations that were available from the contracting office, that "no additional information is available nor will a formal RFP or other solicitation be issued," and that requests for any additional information or a formal solicitation would be disregarded. The synopsis stated that all correspondence and questions on the solicitation, including any requests for information on how to submit a proposal, were to be directed to the listed DESC point of contact. The CBD notice further stated that potential offerors were encouraged to develop project teams involving broad-based industry coalitions of foundries, casting users, and technology providers and to propose programs where at least half of the funded effort would be performed by foundries. The notice also advised that proposals from all responsible sources capable of satisfying DLA's needs would be considered for awards. Offerors were to identify in their proposals the contractor's "type of business, selected from among the following categories: 'Large Business,' 'Small Disadvantaged Business,' 'Other Small Business,' 'HBCU' [Historically Black Colleges and Universities], 'MI'

[Minority Institutions], 'Other Educational' or 'Other Nonprofit' [organizations]." Proposals were to be evaluated against five criteria set forth in the CBD announcement. Decisions to fund selectable proposals would be based on the funds available, scientific and technical merit, and potential contribution and relevance to the DLA mission and could be made up to 1 year from the time of proposal submission. The agency reserved the right to make award on all, some, or none of the proposals received.

Thompson contends that the procurement should have been set aside either totally or partially for small business because the procurement involved metal casting technology and 97 percent of the metal casting industry is small business. Thompson argues that its protest should not be considered untimely since it assumed that the procurement had been set aside for small business and since, in any event, it did not question the agency on this matter because the BAA advised that requests for information would not be honored. Thompson also notes that the agency did not respond to its request for information and its agency-level protest, both filed after January 28.

Thompson's protest that the procurement should have been limited to either a total or partial small business set-aside is untimely. A protest of an agency's procurement procedures concerns a solicitation impropriety which, under our Bid Protest Regulations, must be protested prior to the time set for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1) (1994); ABB Lummus Crest Inc., B-244440, Sept. 16, 1991, 91-2 CPD ¶ 252. Here, the CBD advertisement notified firms that proposals from all responsible offerors would be considered and specifically, that it would consider offers from large businesses, HBCUs, MIs, or other educational or nonprofit organizations. Thus, the notice informed potential offerors that the BAA was not restricted to small businesses. Since Thompson obviously disagreed with the terms of the BAA, it was necessary for Thompson, prior to the deadline set for the submission of initial proposals, to protest the terms of the BAA. Thompson failed to do so. While we believe that the language in the BAA notice concerning requests for additional information could have been clearer, we think it did not preclude Thompson from asking the agency whether or not it intended the procurement to be restricted to small business firms since it did provide a point of contact for questions. In any event, we think the BAA notice was clear--the BAA was not restricted to small businesses, and, therefore, Thompson had no reasonable basis for delaying its protest until after submission of proposals.

Regarding Thompson's assertion that the BAA was simply a means the agency adopted to accomplish improper sole-source awards to two nonprofit consortia, we note that no award has been made. The agency also has advised that there is at least one offeror, a small business, who submitted an acceptable proposal. Since the BAA was open to any responsible offeror, the agency evaluated all proposals and at least one small business firm, in addition to the firms Thompson alleges are in line for award, is in line for award, we see no support for Thompson's allegation.

The protest is dismissed.



Michael R. Golden
Assistant General Counsel